

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1121 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

YUNUS @ MUNNO SATTAR.....Petitioner

Versus

SUB DIVISIONAL MAGISTRATE.....Respondents

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SR DIVETIYA ADD.GOV.T.PLADER

for Respondent No. 1, 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 06/02/98

ORAL JUDGEMENT

By this application, under Article 226 of the Constitution of India, the petitioner calls in question the order of externment dt. 20th May 1997 passed against him by the Sub Divisional Magistrate at Junagadh in Externment Case No. 13/96 on his File, invoking Sec. 56B of Bombay Police Act, whereby he is ordered to leave

the local limits of Junagadh, Rajkot City and Rajkot Rural, Jamnagar and Amreli Districts.

2. The facts which led the petitioner to prefer this petition may in brief be stated. The Police Sub Inspector of the Junagadh City, during the course of the performance of his duty, found that the petitioner was a head-strong person i.e. a tartar & decimator and by different criminal activities, he was terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order were going berserk. No one was, therefore, ready to come forward and state against him. In order to curb chaotic activities, disturbing the public order and making the people to feel that they are free, he thought that the only way out was to extern him from the above stated Districts. He, therefore, lodged the complaint before the Sub Divisional Magistrate at Junagadh for externment. A notice dt. 7th December, 1996 was served on the petitioner, and thereafter hearing the concerned and considering the material placed before him, the Divisional Magistrate at Junagadh reached the conclusion that the petitioner was the head-strong person and his subversive activities were disturbing the public order. The people were feeling insucured and the order as prayed for was required to be passed. He, therefore, passed the order of externment directing the petitioner to leave the local limits of the above stated Districts. It is against that order, the present petition has been filed.

3. Challenging the order on behalf of the petitioner, it is submitted that no proper opportunity to meet with the allegations levelled against the petitioner was given. The order was passed on 20th April, 1997 after the notice dt. 7th December, 1996 was served upon the petitioner. The delay caused in passing such order prejudicially affected the right of the petitioner to make effective representation, and therefore, the externment order was bad in law. The statements of the witnesses are bogus and no incident as stated by the witnesses ever happened. There was no material on record going to show that he was a dangerous person and there was nothing on record justifying his externment. When a quarry was made, the learned advocate representing the petitioner tapered down his submission to the only point viz. delay in passing the order prejudicially affecting the right to make effective representation. I will, therefore, confine to that point only going to the root of the case.

4. It should be born in mind that whenever externment order is passed, the party who is affected by the order, will have to leave the District or the area mentioned in the order for the period specified, and therefore, his right to have free movement anywhere in India or to settle, or reside any where in India will be seriously impaired. When that is so, the authority passing the order should not take anything and everything casually but must deal with the matter promptly and pass necessary order at the earliest, without westing time. Wasting of the time in such matter and passing the order late affecting right of the person must be viewed seriously. In that case, the delay would be fetal, unless it is to the satisfaction of the court the delay by filing the affidavit and/or producing necessary document throwing light on that issue, is explained. In the case on hand, there is a delay of five months and thirteen days in passing the final order.

5. No affidavit explaining the delay has been filed. Of course, Mr.M.M.Makwana, the Sub Divisional Magistrate who has passed the order dt. 20th May, 1997, has no doubt filed his affidavit, but he has conveniently abstained from explaining the delay. When that is so, it should be assumed that for no just cause, the delay has been caused. With the result, petitioner's right is impaired. Consequently, the order passed must be held unconstitutional and cannot be maintained. The same is required to be quashed and set aside.

7. For the aforesaid reasons, this petition is allowed. The order of externment passed on 20th May, 1997 by the Sub Divisional Magistrate at Junagadh, is hereby quashed and set aside and the petitioner-detenu is now free to enter into the aforesaid areas. Rule accordingly made absolute.

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